FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No. 3035 of 2005
in
F.A. (St.) No. 39006 of 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar' orders. Court' or Judge' orders

T. C. Kaushik for Union of India.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. R.S. DALVI JJ.
DATE:07/03/2006

P.C.:

1. This is an application for condonation of delay of 58 days in filing the appeal under Section 35 of the Foreign Exchange Management Act 1999. It is the contention on behalf of the applicant that on account of procedural requirements there was a delay in filing the appeal. The impugned order though is dated 12th May 2003, it was received in the office of the applicant at New Delhi on 13th June 2003 and which was followed by a legal opinion, which was received by the applicant in Mumbai on 12th August 2003. The matter was further

processed in the office at Mumbai as well as again at Law Ministry and thereafter the appeal was filed on 10th October 2003. In terms of section 35 of the said Act a period of 60 days is prescribed for filing the appeal. However, proviso to the said section provides further 60 days in case the applicant is able to make out a sufficient cause for the delay of those 60 days. According to learned advocate for the applicant considering the fact that on account of procedural requirements there was a delay, sufficient cause is made out for condoning the delay.

2. On the other hand learned advocate for the respondent submitted that the appeal has been filed under Section 35 of the old Act i.e. Foreign Exchange Regulation Act 1973 and the provisions relating to appeal thereunder do not provide for further period of 60 days after expiry of initial period of 60 days. It is also submitted on behalf of the respondent that application for condonation of delay was not filed along with the appeal but has been filed only in the year 2005, though appeal was presented in the year 2003.

3. The objection to the condonation of delay on behalf of the respondent is primarily on the ground that the appeal has been filed under the old Act i.e. Foreign Exchange Regulation Act, 1973 and not under Section 35 of the Foreign Exchange Management Act, 1999.

This contention is devoid of any substance. The appeal in question has been filed against the order passed by the Appellate Tribunal and bearing in mind the provisions regarding the procedure, even if changes in procedure are brought out in the course of the pendency of the appeal, the same will have to be followed in accordance with the provisions prevailing, at the time of the disposal of the appeal. Being so the delay will have to be condoned in terms of section 35 of the said Act and not under the provisions of the old Act.

4. The second contention on behalf of the respondent that the application for condonation of delay was not filed along with the appeal is also of no relevancy. Undoubtedly, in terms of Order 41 Rule 3(a) of CPC., when appeals are filed under the Civil Procedure Code, beyond the period of limitation, the application for condonation of delay has to be filed along with the memo of appeal. However, the provisions of Order 41 are not applicable to the appeals filed under Section 35 of the said Act. Therefore, merely because the application for condonation of delay was not filed along with the appeal, that would not be a cause for rejecting the application for condonation of delay.
5. As rightly submitted by the learned advocate for the applicant / appellant section 35 of the said Act prescribes 60 days for filing the appeal on the date of

the communication of the order. The order was communicated to the appellant on 13th June 2003. Being so the period of limitation of 60 days prescribed under Section 35 will begin on 14th June 2003, the day following the day of receipt of the order of the Appellate Tribunal, as the day on which the order was communicated will have to be excluded for the purpose of calculation of the period of limitation. Undoubtedly, therefore the appeal would have been filed on 13th August 2003. The appeal has been filed on 10th October 2003. The facts narrated in the application about the cause for delay have not been challenged by the respondents. Being so the facts stated in the application, having gone unchallenged, they have to be treated as having been established for the purpose of sufficient cause for condonation of delay of 60 days and the application for condonation of delay is to be allowed and is accordingly allowed in terms of prayer clause 9 (a) of the application and thereby the delay in filing the appeal is condoned.

F.A. (St.) No. 39006 of 2003 on being registered be listed for hearing and admission on 3.4.2006. The application is disposed of.

(SMT. R.S. DALVI J.) (R.M.S.KHANDEPARKAR J)